

APPROVED

**BOARD OF DENTISTRY
MINUTES OF BOARD MEETING**

Friday, September 12, 2008

**Perimeter Center
9960 Mayland Drive, Suite 200
Richmond, Virginia 23233-1463
Board Room 4**

CALL TO ORDER: A meeting of the Virginia Board of Dentistry was called to order at 9:10 a.m.

PRESIDING: Paul N. Zimmet, D.D.S., President

MEMBERS PRESENT: Meera A. Gokli, D.D.S.
Jeffrey Levin, D.D.S.
Jacqueline G. Pace, R.D.H.
Darryl J. Pirok, D.D.S.
James D. Watkins, D.D.S.
Myra Howard
Robert B. Hall, Jr. D.D.S.
Augustus A. Petticolas, Jr., D.D.S.

MEMBERS ABSENT: Misty Sissom, R.D.H.

STAFF PRESENT: Sandra K. Reen, Executive Director for the Board
Sandra Whitley-Ryals, Director for the Agency
Emily Wingfield, Chief Deputy Director for the Agency
Elaine Yeatts, Senior Policy Analyst
Alan Heaberlin, Deputy Executive Director for the Board
Angela McPhail, Administrative Assistant

COUNSEL PRESENT: Howard Casway, Senior Assistant Attorney General

QUORUM: With nine members of the Board present, a quorum was established.

INTRODUCTION OF STAFF: Dr. Zimmet asked Ms. Reen to introduce the Board's staff. Ms. Reen introduced Kathy Lackey, Rose DeMatteo, Shirley Small, Teresa Parrish, Grace Sauls, Alan Heaberlin and Angie McPhail. As she made introductions, Ms. Reen gave a brief overview of the duties of each employee. She concluded by commending the staff and saying the Board is now fully staffed.

PUBLIC COMMENT:

Bob Campbell, D.D.S., Virginia Dental Society of Anesthesiology spoke in favor of the petition to require registration of dentists who administer sedation and anesthesia as a way to protect the public. He asked the Board to clarify the regulations on the role of a dental assistant helping with administration. He also discussed his interest in having his course for anesthesia assistants recognized for meeting training needs. He provided copies of information about a state by state guide on anesthesia rules; 2001 correspondence about his course; and, an overview of his course, Anesthesia Assistants: The Clinical Perspective.

Charles Cuttino, D.D.S., Virginia Society of Oral and Maxillofacial Surgeons, spoke to the petition to require registration of dentists who administer sedation and anesthesia, indicating a concern for the costs of registration and asked the Board to make an exception for oral and maxillofacial surgeons who are already required to be registered with the Board.

Alexander Zarrifar, D.D.S., President-elect of the Virginia Academy of General Dentistry asked for a clear explanation of the duties that Dental Assistants I and Dental Assistants II will be permitted to perform and reported concerns about accessibility to care through Medicaid.

Ed Griggs, DDS, Virginia Dental Association, spoke against the petition to require registration of dentists who administer sedation and anesthesia. He questioned whether registration would serve the public and he encouraged the Board to rely on its regulations rather than registration.

**DHP DIRECTOR'S
REPORT:**

Sandra Whitley Ryals reviewed the new measures for evaluating performance on meeting the 250 day goal for case resolution referencing the agency wide charts and the charts for Medicine, Nursing and Dentistry. She applauded the Board for its work on clearing its backlog and its achievement of a 211% clearance rate during the last quarter. She went on to discuss the other key performance measures noting that overall customer satisfaction for licensure applications is 97% with a 93% rate for Dentistry licensees; and that every board achieved 100% on the Agency's goal of processing 95% of all license applications within 30 days or less.

Ms. Ryals also spoke on the proposed legislation for Dental Hygiene Practice which will allow the Department of Health to use dental hygienists more effectively to meet treatment needs in underserved areas. Dr. Watkins moved that the Board support the legislation. The motion was seconded and passed.

Ms. Ryals concluded with a brief explanation of the budget situation, noting that DHP is not a General Fund agency and indicating that she was preparing plans for reducing the Agency's budget as requested by Governor Kaine.

**Prescription Monitoring
Program (PMP):**

Mr. Ralph Orr, PMP Manager, gave a power point presentation on the program commending it as a valuable resource tool for practitioners who prescribe controlled substances. Included in the presentation was information on:

- the increasing abuse of prescription medications
- the sources of pain relievers, which shows that most responders get pain relievers from friends and relatives who got them from their doctors
- the authority to prescribe Schedule II-VI controlled substances and DEA registration for Schedule II-V.
- the information collected
- who may get the information,
- how to access the data, and
- the program's value as a risk management tool.

Mr. Orr also gave information about a Pain Management course that DHP and the VCU School of Medicine are offering online.

**APPROVAL OF
MINUTES:**

Dr. Zimmet asked if the Board members had reviewed the minutes in the agenda package.

- Dr. Pirok moved to accept the minutes of the June 3, 2008, Conference Call Board Meeting. The motion was seconded and carried.
- Dr. Watkins moved that the minutes of the June 5, 2008, Formal Hearing be amended to show that he was excused to attend a SRTA board meeting then moved their adoption as amended. The motion was seconded and carried.
- Ms. Howard moved to accept the minutes of the June 6, 2008, board meeting. The motion was seconded and carried.

- Ms. Howard moved to accept the minutes of the June 6, 2008, Formal Hearing. The motion was seconded and carried.
- Dr. Pirok moved to accept the minutes of the June 25, 2008, Conference Call board meeting. The motion was seconded and carried.
- Dr. Watkins moved to accept the minutes of the June 27, 2008 Public Hearing. The motion was seconded and carried.
- Dr. Pirok moved to accept the minutes of the August 14, 2008 New Member Orientation. The motions was seconded and carried.

REPORTS:

Board of Health Professions (BHP). Dr. Gokli reported on the “Class Act of Virginia,” a service for obtaining interpreters which is now located online; and, on the website “211 Virginia”, which is a phone number that works similar to “411” in that consumers can call for information on contacting services in Virginia. She then explained a Department of Health (DOH) proposal for collaboration with DHP to prevent healthcare acquired infections. She also noted that DOH and DHP are collaborating on a pilot program for offering an online physician continuing medical education course. Dr. Gokli also reported that DOH had done a test of the emergency communication system to contact healthcare providers.

Observation of CITA Exam. Dr. Gokli reported favorably on her observation, noting CITA uses a thorough process which parallels SRTA’s examination. Dr. Gokli found the calibration to be more intense. She circulated an impressive simulated tooth that the students are tested on for clinical skills. Dr. Gokli expressed support for continuing to accept the exam with the only identified concern being the 18% failure rate which is addressed by allowing the candidate to retake the failed section within a year.

SRTA. Dr. Watkins reported that SRTA is aggressively seeking state members and it looks like Alabama is considering to join. He reported that Kathleen White, who is well-qualified, was selected as the Executive Director and that Patty Spear, D.D.S., a former Virginia Board member, has been retained to assist with public relations. Dr. Watkins stated that SRTA is operating in the black and that next year’s annual meeting will be in Biloxi, Mississippi

the first week of August.

Regulatory/Legislative Committee. Dr. Watkins reported that the Committee began work on regulations to implement the new legislation for two levels of dental assistants on Wednesday, September 10, 2008, by holding a forum to get recommendations from key constituent organizations. He explained that the regulatory process should be completed in 2010. He then discussed possible meeting dates with members of the Committee and it was agreed to hold the next Committee meeting on November 5, 2008 at 1:00 pm.

**LEGISLATION AND
REGULATION:**

Ms. Yeatts stated that the Board needs to repeal its current Public Participation Guidelines and replace them with guidelines that conform to the new legal requirements for consistent provisions across state agencies. She advised this might be accomplished by adopting a motion to repeal the Chapter 10 guidelines and to adopt the Chapter 11 guidelines. Dr. Hall moved to repeal Chapter 10 and to adopt Chapter 11. The motion was seconded and carried.

Ms. Yeatts advised that Dr. Futerman's Petition for Rule-making, to require registration of dentists who administer sedation and anesthesia, requests an action beyond the Board's authority. She stated and Mr. Casway agreed that the Board would need legislative authority to establish such a requirement. Dr. Pirok moved that the Board take no action on the petition. The motion was seconded and carried.

Ms. Yeatts explained that Dr. Sotack's Petition for Rule-making requests that the Board provide the option of a retired license with no fee. Following discussion, Dr. Levin made the motion to deny the petition. The motion was seconded and carried.

Ms. Yeatts asked for a decision about retaining Guidance Document 60-11 which is a page excerpted from minutes to address unpaid fees. The consensus was that the guidance should be retained. Ms. Yeatts then requested permission to reissue the document in another format. Dr. Hall moved to reissue the guidance in a standard format. The motion was seconded and carried.

Ms. Yeatts asked if the Perio Guidelines in Guidance Document 60-19, which is a page from a newsletter, was still appropriate. The consensus was that the guidance should be retained. She then requested permission to reissue the document in another format. Dr. Hall moved to reissue the guidance in a standard format. The motion was seconded and carried.

**BOARD
DISCUSSION/ACTION:**

CITA's Membership Invitation. Dr. Zimmet stated that he doesn't see a need to belong to more than one testing agency. Consensus was to decline the invitation. Dr. Watkins said that the Board should still work towards a national exam and that perhaps CITA would be better served by encouraging them to join with another testing agency.

Examiner Requirements for Clinical Examinations. Ms. Reen noted this matter was carried forward from the last meeting so that Mr. Casway might determine if dental hygiene candidates should be supervised by a dentist when they are testing on patients. Mr. Casway advised that the candidates are not licensees and are therefore not under the Board's authority so he recommended taking no action.

Teeth Whitening/Practice of Dentistry. Ms. Reen noted that this matter was carried forward from the last meeting at Dr. Zimmet's request. She then acknowledged the concern about teeth whitening activities and reported that the VDA wrote to the Governor asking him to make the Board take action. She advised that further discussion of this matter may not be productive because the Board does not have jurisdiction over unlicensed practice. Mr. Casway referred to the information provided on actions being taken in West Virginia, Ohio and Oklahoma. He concluded by advising that the Board is not authorized to address unlicensed practice.

Public Health Dental Hygiene Practice. Ms. Reen noted this information about a Maryland program was brought forward from the last meeting to give Mr. Casway the opportunity to research whether Virginia law would permit a similar program in Virginia. She noted that the proposed legislation for Dental Hygiene Practice which the Board endorsed earlier is the result of an

interagency discussion of the Maryland model. She advised that no further action is needed.

Pain Management Patients. Dr. Pirok explained his interest was to have the Board address what a dentist should do when a patient reports having a contract with a physician for pain management, the dental treatment being provided requires pain medication and the pain management physician declines to coordinate with the dentist. Consensus was that a dentist in this situation should document his efforts at coordination and then do what he felt was appropriate for the patient.

CODA Letter re Tidewater Tech Dental Assisting Program. Ms. Reen reported this was additional information on a matter previously reported to the Board and was provided as information only.

Nebraska Board of Dentistry Letter re CRDTS. Ms. Reen stated this was provided as information only.

Letter from Ms. Hellier re Sargenti Paste. Dr. Levin stated that the use of this paste would violate the accepted standard of care in Virginia which could be addressed based on a complaint. Ms. Reen was asked to relay this information to Ms. Hellier.

Letter from the ADA re Clinical Exams. Dr. Zimmet noted that the request is that the Board accept four regional clinical examinations, SRTA, WREB, CRDTS, and NERB. He said no action was needed because the Board already accepts all five regional exams. Dr. Watkins expressed concern that the ADA process excluded CITA.

**BOARD COUNSEL
REPORT:**

At the request of Mr. Casway, Dr. Gokli moved that the Board convene in closed session to discuss litigation; she further moved that the Board convene in closed session to address an Agency Subordinate recommendation; and, she further moved that Howard Casway, Sandra Reen, Emily Wingfield and Angela McPhail attend the closed sessions to aid the Board in its deliberations. The motions were seconded and carried.

Dr. Gokli moved to certify that only matters lawfully exempted

from open meeting requirements were addressed in the closed session. The motion was seconded and carried.

Dr. Levin moved that the Board accept the Consent Order of Dismissal executed by Mr. McCarthy on behalf of Dr. Zurmati. The motion was seconded and carried with Ms. Pace abstaining. Through this action, the Board dismissed cases 99098 and 100380 with prejudice in consideration of Dr. Zurmati's agreement to dismiss all pending litigation against the Commonwealth of Virginia and the Virginia Board of Dentistry with prejudice.

Dr. Watkins moved that the Board accept the agency subordinate decision as amended to increase the monetary penalty to \$1000 and increase the continuing education requirement to 16 hours. The motion was seconded and carried.

**REPORT ON CASE
ACTIVITY:**

Mr. Heaberlin reported that the Board continues to make significant strides in processing cases so that the number of open cases has declined from 642 on January 3, 2008 to 252 on September 5, 2008. He noted that the percentage of old cases is also declining significantly. While acknowledging there is still a lot of work to be done, he thanked the Board members for their efforts and noted their work had achieved an impressive 219% clearance rate in the fourth quarter of 2008.

**EXECUTIVE
DIRECTOR'S
REPORT/BUSINESS:**

Ms. Reen presented a proposed guidance document on the management of advertising complaints that would enable staff to complete probable cause reviews on this type of case. Ms. Pace moved the adoption of the proposed guidance document. The motion was seconded and carried.

Ms. Reen advised that there were two people working for the Board who were not present this morning but who should not be overlooked. She indicated that Deb Southall, who is a dental hygienist and a former board member, is a part time case manager and she noted that Dr. Cuttino, an oral and maxillofacial surgeon, is under contract to assist with case reviews and to serve as an agency subordinate. She noted however that because he also serves as an expert witness, he has not been used as an agency subordinate. Dr. Watkins asked if there is a contract for Dr. Link to serve as an agency subordinate. Ms. Reen responded

that the needed contract was not accomplished before the Governor's cost cutting measures were implemented. The measures include a restriction on new contracts.

**ELECTION OF
OFFICERS:**

Dr. Watkins reported that the Nominating Committee met earlier in the day then moved for the election of the following officers: Dr. Gokli as President of the Board, Dr. Levin as Vice-President and Ms. Pace as Secretary-Treasurer. The motion was seconded and carried.

Dr. Gokli, as her first order of business, presented a plaque to Dr. Zimmet recognizing his leadership as President of the Board from July of 2006 to September of 2008.

ADJOURNMENT:

With all business concluded, the meeting was adjourned at 3:00 p.m.

Meera A. Gokli, D.D.S., President

Sandra K. Reen, Executive Director

Date

Date